

Remarks

Claims 1-59 remain in this application. Claim 9 is amended to correct an obvious typographical error (removal of the hyphen "-" before the period ".").

Rejection Under 35 USC §103(a)

Claims 1-59 are rejected under 35 USC §103(a) as being unpatentable over Shen (U.S. Patent Application No US 20040258827) taken together with Kent et al. Combining Shen with Kent et al. in the manner urged in the Office Action does not render claims 1-59 as obvious.

In the Office Action, the Examiner stated that the rejection under 35 USC §103(a) might be overcome by:

- (1) a showing under 37 CFR §1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another";
- (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR §1.131; or
- (3) an oath or declaration under 37 CFR §1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 USC 104, together with a terminal disclaimer in accordance with 37 CFR §1.321(c).

Kent et al. is directed to a process for manufacturing dairy products in which a liquid dairy substrate, fat, and protein are mixed to generate a dairy mix. Such dairy products include, for example, cream cheese (prepared using either whey or wheyless process), sour cream, and dairy products containing at least 4 percent fat. There is no teaching within Kent et al. to the use of a soy protein in an acid beverage.

In order to remove this rejection, Applicants are complying with (3) above and submit a declaration under 37 CFR §1.130 stating that the application and reference are currently owned by Solae, LLC and that the inventor Cheng Shen named in the application is the prior inventor under 35 USC 104, together with a terminal disclaimer in accordance with 37 CFR §1.321(c). Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 1-59 are rejected under 35 USC §103(a) as being unpatentable over Wong et al. (U.S. Patent Application No. US 20050202147) taken together with Kent et al. Combining Wong et al. with Kent et al. in the manner urged in the Office Action does not render claims 1-59 as obvious.

Kent et al. is discussed above.

In the Office Action, the Examiner stated that the rejection under 35 USC §103(a) might be overcome by:

- (1) a showing under 37 CFR §1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another";
- (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR §1.131; or
- (3) an oath or declaration under 37 CFR §1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 USC 104, together with a terminal disclaimer in accordance with 37 CFR §1.321(c).

In order to remove this rejection, Applicants are complying with (3) above and submit a declaration under 37 CFR §1.130 stating that the application and reference are currently owned by Solae, LLC and that the inventor Cheng Shen named in the application is the prior inventor under 35 USC 104, together with a terminal disclaimer in accordance with 37 CFR §1.321(c). Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Double Patenting

Claims 34-37, 39-51 and 53-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending Application No. 10/462,894. Patent application No. 10/462,894 is Shen (U.S. Patent Application No US 20040258827). A terminal disclaimer was submitted to overcome the above

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discussed rejection. This same terminal disclaimer suffices to overcome the double patenting rejection. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

For the foregoing reasons, it is submitted that the present claims are in condition for allowance. The foregoing remarks are believed to be a full and complete response to the outstanding office action. Therefore favorable reconsideration and allowance are respectfully requested. If for any reason the Examiner believes a telephone conference would expedite the prosecution of this application, it is respectfully requested that she call Applicant's representative at 314.982.2409.

If any additional fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 50-0421.

Respectfully submitted,
SOLAE, LLC

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